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CHARLES ELMORE CROP
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. [redacted] 63

THE UNITED STATES OF AMERICA,

Appellant,

vs.

THE ACME CAN COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

JOHN ARTHUR BROWN,
Counsel for Appellee.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUNE TERM, 1935

No. 6665

UNITED STATES OF AMERICA

vs.

THE ACME CAN COMPANY.

STATEMENT MAKING AGAINST JURISDICTION.

(Filed April 24, 1936.)

In compliance with Rule 12, Paragraph 3, of the Supreme Court of the United States, The Acme Can Company submits herewith its statement showing the matters or grounds making against the jurisdiction of the Supreme Court asserted by the United States of America, appellant in this cause:

A. The statutory provision relied upon by appellant to sustain the jurisdiction of the Supreme Court in this cause is the Criminal Appeals Act of March 2, 1907, Chapter 2564, 34 Stat. 1246, Title 18, Section 682 of the United States Code, which provides in part as follows:

> "The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases."

The decision in this cause was rendered by the District Court in the opinion filed March 11, 1936, which opinion is as follows:

> "In view of the similarity between this case and that of the *United States of America* v. *Charles Resnick* and *Joseph Resnick*, partners, trading as *L. Resnick & Sons*, June Term, 1935, No. 6688, the opinion filed March 11, 1936 in the latter case controls in this case.
>
> The demurrer to the indictment is sustained."

The appellee calls attention to the Petition for Appeal filed by appellant wherein appellant prays for leave to appeal to the Supreme Court of the United States for a reversal of the judgment and order made on March 11, 1936.

The appeal in this cause was taken on April 14, 1936. It appears, therefore, from the record sought to be reviewed, that the appeal was not taken within thirty days after the decision had been rendered. The mere entry of the Order of April 14, 1936 by the District Court sustaining the demurrer a second time does not extend the time within which the appeal must be taken.

B. The District Court construed the Act of May 21, 1928, Chapter 664, 45 Stat. 685, Title 15, Sections 257-257 (i), of the United States Code, to be inapplicable to the manufacture and sale of two quart size hampers for fruits and vegetables. A similar construction has heretofore been given this statute by the Supreme Court. In *Pacific States Box and Basket Company* v. *White*, 296 U. S. 176, the Supreme Court held that the provisions of this statute were inapplicable to a pint size container for raspberries and strawberries in the following language:

> "The Standard Baskets and Containers Act of May 21, 1928, c. 664, 45 Stat. 685 (15 U. S. C. A., Sec. 257 *et seq.*), has no relation to the matter here under con-

sideration. That statute deals solely with hampers, round stave, and splint baskets of capacity not less than one-eighth bushel."

In compliance with Rule 12, Paragraph 3, and Rule 7, Paragraph 4, of the Supreme Court of the United States the appellee includes in this opposing statement the following motion to affirm, which is united in the alternative with the following motion to dismiss:

Motion to Dismiss.

The appellee moves the Court to dismiss the appeal filed herein for the following reason:

1. The appeal was not taken within thirty days after the decision had been rendered by the District Court as provided in the Criminal Appeals Act of March 2, 1907, Chapter 2564, 34 Stat. 1246, Title 18, Section 682 of the United States Code.

Motion to Affirm.

In the event that the aforesaid Motion to Dismiss is not granted, the appellee moves the Court to affirm the decision of the District Court sustaining the demurrer to the indictment for the following reasons:

1. The questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

2. The construction by the District Court of the Statute upon which the indictment is founded is the same construction previously given the statute by the Supreme Court.

Respectfully submitted,

(Sgd.) JOHN ARTHUR BROWN,
Attorney for The Acme Can Company.